

except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains...." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsection to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(b) Procedure. An ordinance may be introduced by an member at any regular or special meeting of the council. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing the council may adopt the ordinance with or without amendment or reject it but, if it is amended as to any matter or substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. As soon as practicable after adoption of any ordinance, the clerk shall have it published again together with a notice of its adoption.

(c) Effective Date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the city: (1) the ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the time when they are available for public inspection.

Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by a public utility for its services or authorize the borrowing of money except as provided in subsection 5.09(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to subsection 5.09(b) shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.15. Codes of Technical Regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of section 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code or technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to subsection 2.16(a).

Copies of any adopted code of technical regulations shall be made available by the city clerk for distribution or for purchase at a reasonable price.

Section 2.16. Authentication and Recording, Codification; Printing

(a) Authentication and Recording. The city clerk shall authenticate by his signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions

adopted by the council.

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially at the _____, City Code. Copies of the code shall be furnished to city officers, places in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) Printing of Ordinances and Resolutions. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first _____ City Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of _____, or the codes of technical regulations and other rules and regulations included in the code.

V. TRIBAL MEETINGS

A. Questions.

Should there be a specific constitutional provision providing for regular tribal meetings? What would be the purpose of these tribal meetings? Should the precise date for them be fixed? If so, when should these meetings be? What procedure should be followed in calling these meetings? Should the procedure be set forth in the Constitution or by ordinance of the council or by some other procedure.

B. Examples.

Example 1

ARTICLE IV - MEETINGS OF THE TRIBE

SECTION 1. The Council shall from time to time call meetings of all voters of the Tribe to lay before them such matters as may come before such a general meeting. A general meeting of the Tribe shall be called upon request of a majority of the qualified voters of any district.

Document 39

Example 2

SEC. 3. Annual meetings of the tribal membership shall be held on the second Tuesday in May for the purpose of receiving reports and transacting any other business which may come regularly before the tribe.

SEC. 4. Special meetings of the tribe may be called at the discretion of the chairman and shall be called by him upon the written request of a majority of the Business Committee or upon the written request of twenty-five members of the tribe, provided, that at least ten days' notice shall be given in each instance.

SEC. 5. The principal object of a special tribal meeting must be stated in the notice and may include the words "and for the transaction of any other business that may be presented." Unless these words are added no other business can be transacted except for the object stated in the notice.

Document 41

Example 3

SEC. 2. Time and procedures of general meetings of the Band shall be stated in ordinance or resolution form, provided a general meeting of the Band is scheduled at least once every year.

Special meetings of the Band shall be called by the Chairman, in writing, upon his own initiative, upon request of three members of the Governing Board, or upon a petition signed by at least 50 members of the Band 21 years of age and over.

In the absence of the Chairman and Vice-Chairman at a special or general meeting of the Band, there shall be an Acting Chairman elected by the qualified voters of the Band in attendance to preside at the particular meeting. Any qualified voter or representative of the Federal Government may preside during the election of the Acting Chairman.

Document 2

MEMBERSHIP

I. CONSIDERATIONS

The purpose of a membership provision is to establish those basic requirements which a person must meet in order to be a member of the Tribe. All tribal constitutions have a membership provision. Although it is possible simply to draft a brief provision imposing upon the tribal council the duty to enact legislation establishing tribal membership requirements, every tribe has chosen to establish membership requirements in their constitutions. The reason for this is that unlike state governments and the federal government, Indian tribal membership, or citizenship, has since time immemorial been based upon more than simply residence within a defined territory, although that is one possible requirement for tribal membership. But more than that, Indian tribes have traditionally identified their members by certain other important characteristics and beliefs shared by all the members of the tribe, including race, culture, kinship structure, religion, and economic philosophy. In short, Indian tribes have since time immemorial identified their members as all those who share an identifiable way of life unique to the tribe. This fact presents tribal governments with a more difficult problem than that faced by non-tribal governments. It is for the above reason that Indian tribes usually carefully list in membership provisions in their constitutions those requirements which they believe are basic and fundamental toward preserving the identity of the Tribe.

In summary, membership requirements of Indian tribes are generally considered by tribes to be so fundamentally important to the existence and identity of the tribe that the requirements are usually included in the tribal constitution, rather than left to be established by the tribal council by legislation.

A second consideration of course, is that membership in the Tribe also entitles a person to receive substantial benefits not available to non-members. For example, tribal members will have a right to share in tribal assets and to receive tribal benefits, as well as federal services provided to the Tribe such as education scholarships and health care and facilities. Tribal members also are entitled to the protection of federal laws designed to protect the unique rights of Indian tribes, such as the laws which permit the BIA to hold tribal and individual lands in trust and exempt those lands from taxation and other kinds of encumbrances.

A third consideration is that, in our opinion, the Menominee Tribe is not legally bound to accept the membership requirements established in the Menominee Restoration Act as the requirements which will be in effect after the Constitution is adopted. The roll prepared under the Menominee Restoration Act is essentially a tribal roll prepared by the Secretary of the Interior pursuant to Congressional requirements for two purposes: (1) to identify those

persons whom the Secretary will accept as having the right to vote on the tribal Constitution and on the first tribal council, and (2) to identify those persons eligible for federal services provided to the Menominee Tribe during the interim before adoption of the Constitution and establishment of a tribal roll thereunder.

As a background for the decisions to be made with regard to this article, the remainder of this section briefly reviews previous Menominee tribal membership requirements.

A. Requirements For Membership In the Menominee Tribe Prior To Termination.

1. Before 1934.

Before Congress enacted the Act of June 15, 1934, (to be discussed next), requirements for membership in the Menominee Tribe were apparently few and members were simply those people whom the Tribe recognized as members. Degree of blood was apparently not a factor, but birth on the reservation was required. This is the implication from a House Report in 1934 (on the then proposed Act of 1934 which purported to establish new Menominee tribal membership requirements):

Under present regulations the degree of Indian blood is not a factor in the determination of tribal rights, which depend upon birth into the tribe on the reservation, affiliation with the Indians and recognition by them as a member of the tribe. Hence, with certain exceptions, not important here, children born in a white community after the parents abandoned tribal relations would not be entitled to tribal membership and rights. [H. Rep. No. 1406, 73d Cong., 2d Sess. (April 30, 1934).]

2. The Act of June 15, 1934 (48 Stat. 965). (Included as part IV of this discussion on tribal membership.)

In 1934, apparently pursuant to a request of the Tribe, the United States Congress enacted the Act of June 15, 1934, which established the following requirements for future enrollment in the Tribe (see section 4 of that Act):

- a. The person must possess at least one-fourth degree Menominee blood.
- b. Both parents of the person must be residents on the reservation at the time of the person's birth.
- c. One of the person's parents must be an enrolled member of the Tribe.

- d. No person who participated in the so-called "Half-Breed Payment of 1849" (commonly referred to as "49ers") was eligible for enrollment.
- e. No descendants of "49ers" were eligible for enrollment.

All persons already enrolled as Menominees on the pre-1934 roll were automatically placed on the new 1934 roll. Thus, the roll previous to 1934 was used as the base roll. The Act also provided a right of appeal from a denial of a person's application to the federal district court. (See section 6 of the Act).

- 3. The Act of July 14, 1939 (53 Stat. 1003).
(Included in Part IV)

By the Act of 1939, Congress amended the Act of 1934 (see above) to provide that persons would be enrolled "irrespective of the derivation of the Menominee blood." This meant that the degree of "49er blood was not to be considered in regard to whether a person was entitled to be considered for enrollment in the Tribe." Thus, of the above five enumerated requirements in the 1934 Act, after 1939, only the first three requirements were applicable for tribal enrollment. The Act of 1939 also required the Secretary to review the pre-1934 base roll to determine the tribal blood degree of all persons on that roll. The reason for this, as explained in the House Report, was to enable the Secretary to determine accurately the blood degree of descendants of persons on the base roll in light of the 1/4 degree requirement of the 1934 Act.

- 4. The Termination Act of 1954.

This Act provided that a final roll be established for the Tribe. June 17, 1954 was designated as the cut-off date for all potential enrollees, and any person born after that date was ineligible for enrollment in the Tribe. The membership roll prepared pursuant to the Termination Act apparently was based upon the requirements established by the Act of 1934 as amended by the Act of 1939.

B. The Roll Established Pursuant to the Menominee Restoration Act.

Under the Menominee Restoration Act, and the regulations published pursuant to that Act (25 C.F.R. §43k.1-43k.17) the Menominee membership roll will consist of person who satisfy the following requirements:

- 1. All these persons whose names appear on the Termination Act roll, or on any other official tribal roll; and

2. All other persons who satisfy the following requirements;

- a. They are descendants of a person or persons whose names appear on the above mentioned membership rolls; and
- b. They possess at least one-fourth degree Menominee Indian blood; and
- c. They have filed an application for enrollment with the Tribe in accordance with the procedures set forth in 25 C.F.R. §§43k.1 et seq.

As stated previously, the reasons for the establishment of the roll pursuant to the Menominee Restoration Act are (1) to identify those persons who will be considered to be tribal members for the purpose of voting on the adoption of a tribal constitution and in the first election of the tribal governing body, and (2) to identify those persons whom the Secretary of the Interior will treat as tribal members for purposes of being eligible for federal benefits applicable to the Tribe. You should note that the Menominee Restoration Act in setting forth requirements for tribal membership basically adopts all other membership rolls of the Tribe; thus, all persons on those rolls are automatically members of the Tribe even though there may have been different requirements for each roll. The act then establishes requirements for additions to the resulting roll.

II. QUESTIONS

A. There Are Three Approaches To The Drafting Of This Constitutional Provision.

1. The Constitution could list no membership requirements, but instead simply direct the tribal council to establish the membership requirements by tribal ordinance, or
2. The Constitution could list all membership requirements leaving no power in the tribal council to add additional requirements, but authorizing the council to enforce the provision by tribal ordinance which would consist of establishing a procedure by which persons could apply

and be approved for tribal membership, or

3. The Constitution could list certain requirements which are considered to be basic and fundamental to tribal identity and permit the tribal council to add other requirements by tribal ordinance as well as to enforce the provision by appropriate legislation.

Which of the above three approaches should be adopted as far as the Menominee Constitution is concerned? If you agree that membership requirements are of basic and fundamental importance, it would be advisable to state them in the Constitution and to deny the tribal council the power to add requirements to those stated in the Constitution. The council could then be directed to establish a procedure by which new applications for membership are to be considered and approved or disapproved, and perhaps by which disapprovals may be appealed.

B. If You Decide That The Menominee Constitution Should List All Or Some Membership Requirements, Then The Following Questions Must Be Answered Before Such Provision Can Be Drafted.

1. Should there be a requirement of a certain degree of Menominee Indian blood? If so, what should that degree be? Note that since 1934, a person had to have at least one-quarter degree Menominee Indian blood to be eligible to be a member of the Tribe. Consider in conjunction with question the following question: Should the Tribe establish two or more classes of membership based upon blood degree which would result in members of each class being entitled to different tribal privileges. For example, 1/4 or more degree of tribal blood might entitle a person to share in any distribution of tribal assets, while persons with less than 1/4 degree tribal blood could not share in such a distribution, but would be treated as tribal members for all other purposes. This is illustrated in Example 8 in part III to follow.

If the Constitution does establish two or more classes of membership, what should be the distinguishing characteristics of each class in terms of requirements and entitlement to benefits?

Another kind of provision, establishing membership classes, which is illustrated

in Example 7 below, places a premium on a specified degree of tribal blood quantum insofar as membership eligibility is concerned. Note in Example 7 that persons who have one-quarter degree tribal blood must also have parents who resided on the reservation at the time of the person's birth in order to be a tribal member; but persons who are one-half or more degree blood are members regardless of where his or her parents resided at the time of the person's birth. Should the Menominee Constitution incorporate this kind of provision?

2. Should there be a requirement that one or both of a person's parents must have resided on the reservation at the time of the birth of the person?
3. Should there be a requirement that one or both of the parents of the person be on a Menominee roll? If so, should a particular roll or rolls be designated?
4. Should there be a requirement that the person be a resident of the reservation in order to be a member of the tribe?
5. Should there be a provision allowing for membership by adoption? If so, should members by adoption have less rights than members who meet the constitutional requirements for membership? What should be the requirements for becoming a member by adoption?
6. Should the constitution set up some of the mechanics of the procedure by which a person can become a member of the tribe? Or should the tribal council be directed to set up the procedure by legislation? In either case, it would be advisable to require in the Constitution that a person be on the official tribal roll, in order for the person to be entitled to membership rights. Thus, if a person meets the requirements, but has not had his membership application approved, that person would not be entitled to be treated as a member.

If the Constitution sets up the procedure, what should be included as details of the

procedure?

- a. Who should decide whether a person meets the constitutional qualifications for membership? Should the tribal council itself decide? Should a special enrollment committee decide? Who should appoint the committee? The tribal council? The Secretary of the Interior?
 - b. Should time periods be established within which a person's application must be acted upon?
 - c. Other details? If the Constitution does include certain details of procedure, it would nevertheless be advisable to authorize the tribal council to enact other procedural details where necessary.
7. Should the Constitution guarantee a person the right to appeal an adverse decision as to his application for membership? Should the appellate body be a special tribal committee? Should the tribal council be directed to set up this Committee? Or should the tribal courts have the duty of reviewing an appeal of an adverse decision on membership? Or should the Secretary of the Interior be the reviewer of appeals from adverse decisions on membership? When should a decision be considered to be final and conclusive with no further right of appeal?
8. Should there be certain disqualifications for tribal membership? For example, enrollment in another tribe is a common disqualification for tribal membership found in tribal enrollment provisions whether in constitutions or ordinances. Are there other kinds of disqualifications which should be included?
9. Should there be a provision which designates how a person can lose his tribal membership? For example, enrollment in another tribe could constitute cause for forfeiture of membership in the Menominee Tribe. Are there any other reasons which should result in automatic forfeiture of tribal membership?

10. Should the provision set up a process by which a person may surrender his tribal membership? Or should the provision simply empower the tribal council to establish a procedure by which a person may surrender a tribal membership?
11. Should one requirement for tribal membership be that a person be a United States citizen?
12. Should one or more previous Menominee membership rolls be adopted as a base roll and the requirements in the Constitutions made applicable only to additions to the base roll made pursuant to the requirements for membership as stated in the Constitution? A base roll is one which is automatically included as a part of the new roll. Thus, the persons on the base roll are automatically placed on the new roll. Usually any new requirements for membership are made applicable only to persons added to the base roll. An illustration of this is found in Section 1 of the Act of 1934; see part IV to follow. See also the examples in part III next; almost every one adopts a previous tribal roll as a base roll. If you decide to adopt a base roll, which previous roll or rolls should be established in the constitution as a base roll?

One major advantage to adopting a previous roll as a base roll is that the Tribe will be spared much time, effort and expense in preparing and sending out applications for membership, processing them, approving or disapproving them, and waiting for appeals to be concluded. Many tribal members will automatically be on the current tribal roll if they are on the base roll. Thus, only additions to the base roll must be processed and approved in light of the constitution requirements. If there is no base roll, then the Tribe must prepare an entirely new roll by processing and approving applications from all potential members of the Tribe. Information in previous rolls could be evidence of eligibility. Also, while the Tribe is preparing a tribal roll, tribal members may have difficulty in proving eligibility for tribal or federal benefits. In summary, there are definite advantages to adopting a previous membership roll as a base roll and then making any new membership requirements applicable to additions to that roll, as

opposed to developing an entirely new tribal membership roll.

There should be no problem with adopting a previous Menominess roll as a base roll if the membership provision of the Constitution either adopts the same requirements as the base roll or adopts new requirements which result in persons not eligible to be on the base roll becoming eligible to be on the new roll. For example, the Constitution membership requirements could be the same as the base roll except that the base roll requires one-eighth degree tribal blood. This means that all persons on the base roll more than satisfy one-eighth degree requirement, and thus all that need be done is to add to that base roll persons who have one-eighth degree tribal blood and satisfy all other requirements.

However, a problem will arise if a new membership requirement is established by the Constitution which could not be met by many persons on the membership roll chosen as a base roll. For example, suppose that the roll prepared pursuant to the Menominee Restoration Act were adopted as the base roll, but a new membership requirement was added which required a person to be a resident of the reservation in order to be a tribal member. Many persons on the reservation in order to be a tribal member. Many persons on the Restoration Act roll would not meet that requirement. If such a problem arises, it would be advisable not to adopt a previous roll as a base roll, but rather it would be advisable to prepare an entirely new roll. The reason is that there may be legal problems in removing persons from a tribal roll once that roll is adopted.

III. EXAMPLES

MEMBERSHIP

Example 1

ARTICLE II - MEMBERSHIP

SECTION 1. For the purpose of membership in this Band under this Constitution, the following shall be included:

(a) All persons whose names appear on any official allotment rolls of the Bad River Reservation.

(b) All children born to any member of the Bad River Band who is a resident of the reservation at the time of the birth of said children.

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, governing future membership and the acquisition or loss of membership.

SEC. 3. The administration of the foregoing powers, and of all by-laws and ordinances affecting tribal membership, shall be vested in a Membership Committee, to be appointed by the Tribal Council independent of its own members. The acts of such committee shall be subject to review by the Tribal Council and the action of such Council shall be final, except as otherwise hereinafter provided.

SEC. 4. Adoption of a nonmember of the Band shall be made by written application to the Membership Committee who shall make recommendations to the Tribal Council. The decision of the Tribal Council shall be subject to popular vote at the next annual election.

SEC. 5. Property rights shall not be acquired or lost through membership in this organization, except as provided herein.

Document 1

Example 2

ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin shall consist of the following persons:

(a) All persons of Lac Courte Oreilles Chippewa Indian blood whose names appear on the official census roll of the Band as of January 1, 1940, provided such persons are citizens of the United States and are not enrolled with another tribe, band or group of Indians. This roll shall be the basic membership roll.

(b) Any lineal descendant of a member born prior to the effective date of this constitution, provided an application for enrollment is filed with the Governing Board within two years of the effective date of this constitution, and provided further, that such person is not enrolled with another tribe, band or group of Indians.

(c) Any person gaining membership after the effective date of this constitution through ordinances enacted under Section 2 of this Article.

SEC. 2. The Governing Board shall enact an ordinance within one year from date of approval of this constitution subject to approval of the Secretary of the Interior stating the criteria of future membership and adoption of new members. Such ordinances shall include the provision that only persons of 1/8 or more Lac Courte Oreilles Indian blood be granted membership.

SEC. 3. Any person who has been rejected for enrollment as a member of the Band shall have the right of appeal to the Secretary of the Interior, whose decision shall be final.

SEC. 4. The Governing Board shall have the power to enact ordinances governing loss of membership, such ordinance subject to the approval of the Secretary of the Interior. The ordinance shall include a provision for appeal of decisions to the Secretary of the Interior.

Document 2

Example 3

ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Shakopee Mdewakanton Sioux Community shall consist of:

- (a) All persons of Mdewakanton Sioux Indian blood, not members of any other Indian tribe, band or group, whose names appear on the 1969 census roll of Mdewakanton Sioux residents of the Prior Lake Reservation, Minnesota, prepared specifically for the purpose of organizing the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior.

- (b) All children of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community.
- (c) All descendants of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, Provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.

SEC. 2. The governing body shall have power to pass resolutions or ordinances, subject to the approval of the Secretary of the Interior, governing future membership, adoptions and loss of membership.

Document 14

Example 4

ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Minnesota Chippewa Tribe shall consist of the following:

(a) Basic Membership Roll. All persons of Minnesota Chippewa Indian blood whose names appear on the annuity roll of April 14, 1941, prepared pursuant to the Treaty with said Indians as enacted by Congress in the Act of January 14, 1889 (25 Stat. 642) and Acts amendatory thereof, and as corrected by the Tribal Executive Committee and ratified by the Tribal Delegates, which roll shall be known as the basic membership roll of the Tribe.

(b) All children of Minnesota Chippewa Indian blood born between April 14, 1941, the date of the annuity roll, and July 3, 1961, the date of approval of the membership ordinance by the Area Director, to a parent or parents, either or both of whose names appear on the basic membership roll, provided an application for enrollment was filed with the Secretary of the Tribal Delegates by July 4, 1962, one year after the date of approval of the ordinance by the Area Director.

(c) All children of at least one quarter (1/4) degree Minnesota Chippewa Indian blood born after July 3, 1961, to a member, provided that an application for enrollment was or is filed with the Secretary of the Tribal Delegates or the Tribal

Executive Committee within one year after the date of birth of such children.

SEC. 2. No person born after July 3, 1961, shall be eligible for enrollment if enrolled as a member of another tribe, or is not an American citizen.

SEC. 3. Any person of Minnesota Chippewa Indian blood who meets the membership requirements of the Tribe, but who because of an error has not been enrolled, may be admitted to membership in the Minnesota Chippewa Tribe by adoption, if such adoption is approved by the Tribal Executive Committee, and shall have full membership privileges from the date the adoption is approved.

SEC. 4. Any person who has been rejected for enrollment as a member of the Minnesota Chippewa Tribe shall have the right of appeal within sixty days from the date of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Committee and the decision of the Secretary of the Interior shall be final.

SEC. 5. Nothing contained in this article shall be construed to deprive any descendant of a Minnesota Chippewa Indian of the right to participate in any benefits derived from claims against the U.S. Government when awards are made for an on behalf and for the benefit of descendants of members of said Tribe.

Document 15

Example 5

ARTICLE III - MEMBERSHIP

SECTION 1. All persons of Indian blood whose names appear on the census roll of April 1, 1934, of the Crandon Sub-Agency and who were at the time of that roll residing or entitled to reside on land bought in Michigan under the Act of June 30, 1913, and all their descendants who are so residing or entitled to reside at the time of the adoption of this Constitution are members of this Community. Within 2 years after the adoption of this Constitution the governing body of the Community may correct the above-mentioned census roll, if necessary, with the approval of the Secretary of the Interior.

SEC. 2. (a) Every child born to any member of the Community provided such member as a resident of the reservation at the time of birth of said child shall be a member of this Community.

(b) Every child both of whose parents are members of the Community shall be a member of this Community.

(c) Every child of one-half or more Indian blood to any nonresident member of the Community shall be a member of this Community.

SEC. 3. The members of this Community may by a majority vote adopt as a member of the Community any person of Indian blood related by marriage or descent to the members of the Community who will assist the Community in the fulfillment of its purposes and also any other person whose adoption is approved by the Secretary of the Interior.

Document 17.

Example 6

ARTICLE II - MEMBERSHIP

SECTION 1. Membership of the Rosebud Sioux Tribe shall consist as follows:

(a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.

(b) All persons born after April 1, 1935, and prior to the effective date of this amendment, to any member of the Rosebud Sioux Tribe who was a resident of the reservation at the time of the birth of said persons. [Amendment No. V, effective May 2, 1966.]

(c) All children of one-fourth or more Rosebud Sioux Indian blood born after the effective date of this amendment to a member of the tribe, regardless of the residence of the parent. [Amendment No. V, effective May 2, 1966.]

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

Document 20.

Example 7

ARTICLE II - MEMBERSHIP

SECTION 1. All persons of Indian blood whose names appear on the official census roll of the Lac du Flambeau Reservation as

of January 1, 1936, shall be members of the Tribe, provided, that the Tribal Council shall have power to revise said roll, with the approval of the Secretary of the Interior, at any time within amended seventeen years from the approval of this Constitution.

SEC. 2. (a) Any child, one-fourth (1/4) or more Indian blood born to any member of the Tribe who at the birth of such child resided on the reservation shall be entitled of this Constitution.

(b) Any child of one-half (1/2) or more Indian blood born to any member shall be entitled to membership regardless of his parents' residence.

(c) Any person of Indian blood who is a descendant of any member may be admitted to membership by a majority vote of the Tribal Council.

(d) Any person of Indian blood married to a member may be admitted to membership by a three-fourth (3/4) vote of the Tribal Council.

(e) Any person adopted into membership must be a permanent resident of the reservation and not a member of any other Indian tribe.

(f) Applications for membership shall be submitted by the applicant or his parent or guardian to a Committee on Membership, which shall pass upon them and present them to the Tribal Council for final action.

SEC. 3. Vested property rights shall not be acquired or lost through membership in this organization except as provided herein.

Document 3

Example 8

ARTICLE II - MEMBERSHIP

SECTION 1. Tribal members having the right to share in any per capita distribution of Tribal monies shall be: Those persons of Blackfeet Indian blood whose names appear on the official membership roll of the Blackfeet Tribe; and all persons having one-fourth (1/4) degree or more of Blackfeet Indian blood born to any blood member of the Blackfeet Indian Tribe after that date.

SECTION 2. Persons of less than one-fourth (1/4) degree of Blackfeet Indian blood born to any member of the Blackfeet Tribe, shall be Tribal members and shall have all the rights of members except the right to per capita distribution of Tribal monies.

SECTION 3. Separate rolls shall be kept of both classes of membership.

SECTION 4. The Big Council shall make laws regulating membership according to this article, subject to review by the Blackfeet Judicial System.

-OR-

(Choice 2 - left as is)

SECTION 1. Members of the Blackfeet Tribe shall consist of all persons of Blackfeet Indian blood whose names appear on the official membership roll of the Blackfeet Tribe. All children having one-fourth (1/4) degree of Blackfeet Indian blood or more shall be eligible for enrollment in the Blackfeet Tribe.

SECTION 2. The Big Council shall make laws regulating membership according to this article, subject to review by the Blackfeet Tribal Court.

BUSINESS MANAGEMENT OF TRIBAL ASSETS

I. CONSIDERATIONS

A. What Are Tribal Assets?

After approval by Congress of the Menominee Transfer Plan, all real property of MEI was transferred to the United States in trust for the Menominee Tribe. See, narrative part of Transfer Plan at p.A-39. In addition, all personal property of MEI was transferred to the Tribe. See, narrative at p.A-39. A tribal business, Menominee Enterprises, was established by the Menominee Restoration Committee and delegated the power and authority to manage and operate the real and personal property transferred to the Tribe. See, Management Plan of Menominee Enterprises, a part of the Transfer Plan.

Present tribal assets thus include (1) all real and personal property formerly owned by MEI; (2) the tribal business, i.e., Menominee Enterprises (see especially section 13 of the Management Plan of Menominee Enterprises at pp.28-29); and (3) any profits which may be distributed to the Tribe for its use in accordance with the provisions of the Management Plan for Menominee Enterprises. See, Management Plan for Menominee Enterprises, section 10b, pp.25-26.

B. The Present Arrangement For The Management Of Tribal Assets.

The Plan for transfer of all of the assets of Menominee Enterprises, Inc., a Wisconsin Corporation, pursuant to sections 6(a) and 6(b) of the Menominee Restoration Act (hereafter referred to as the "Transfer Plan") was approved by Congress in March of 1975. The Transfer Plan included among other documents, the "Trust and Management Agreement between the Menominee Indian Tribe of Wisconsin and the Secretary of the Interior of the United States" (hereafter referred to as the "Agreement"), and the "Management Plan of Menominee Enterprises, a Tribal Enterprise of the Menominee Indian Tribe of Wisconsin" (hereafter referred to as the "Plan"). The Agreement and the Plan together established the present arrangement for the management of the tribal assets. This arrangement, with its main features, is diagramed for your reference and attached as Attachment A at the end of this discussion on this article.

The present arrangement for the management of tribal assets is scheduled to continue until six (6) months after the tribal council takes office. This is because the Agreement and the Plan are each scheduled to expire six (6) months after the tribal council takes office. However, the tribal council, under both the Agreement and the Plan, is given the right to reaffirm both of those documents. If both are reaffirmed, the Agreement and the Plan will continue in

effect and, consequently, the present arrangement for the management of tribal assets will continue in effect.

The two basic questions for you to consider in contemplating the substance of this article are first, do you think that the management of tribal assets is so important that the constitution should establish basic checks and guidelines for the exercise of the tribal council's power to manage tribal assets? Second, if you think there should be such constitutional checks and guidelines on the tribal council's power to manage, then you should consider this question: In reviewing the basic principles of the Agreement and the Plan which underlie the present arrangement for the management of tribal assets, do you think these principles provide sufficient checks and guidelines and, therefore, should be incorporated into this constitutional article?

In summary, in considering the substance of this article, you should consider this question: Do you think the present arrangement for the management of tribal assets, established by the Agreement and the Plan, should be incorporated into this constitutional article?

If you decide to adopt the present management arrangement into the constitution, this article will incorporate the basic principles underlying the arrangement. The article could also impose a duty on the tribal council to implement those principles by entering into an agreement with the United States to define specifically its role in the management, and by establishing the principle business area of the Tribe by written plan or charter. In light of such duties, the tribal council should find it logical to reaffirm the present Agreement and Plan.

The next sections of this discussion will set forth the basic principles of the Agreement and Plan for your consideration.

C. Basic Principles In The Trust And Management Agreement Which Could Be Incorporated Into The Constitution.

The Trust and Management Agreement (hereafter referred to as the "Agreement") was entered into by the Menominee Restoration Committee (hereafter referred to as "MRC") on behalf of the Tribe and the Secretary of the Interior on behalf of the United States. The Agreement essentially accomplishes two general purposes: (1) It limits and defines the scope of the management power and authority of the MRC (and the tribal council), and (2) it limits and defines the scope of the power and responsibility of the Secretary to supervise the management decisions of the MRC (and the tribal council).

Generally, the Agreement impliedly acknowledges that the Tribe has the inherent general power to manage, operate and control tribal assets. Accordingly, the Tribe has the power to create a tribal business (or businesses) to manage the assets on behalf of the Tribe. (See Agreement, section 8, p.5). The article of the

constitution which authorizes the tribal council to exercise all powers of the Tribe except as limited by the constitution, will operate to grant these powers to the tribal council.

The following are basic principles established in the Agreement which in effect limit and define the power of the MRC (and the tribal council once it takes office) to manage the tribal assets. If these principles are adopted into the tribal constitution, it would be reasonable and logical for the tribal council to reaffirm the Agreement.

1. Basic Management Policy.

Maximum self-determination of the Menominee people, that is, the assurance of federal protection, not federal domination, is acknowledged to be the policy behind the provisions of the Agreement. (See section 4, p.3). This statement, in effect, establishes the general policy to be followed in determining specifically what scope of involvement is and should be demanded of the United States in the management of the tribal assets. Such a policy could be incorporated into the constitution as a guideline for the tribal council in negotiating future agreements (or reaffirming the present one, with United States concerning the management of tribal assets.

2. Management of Tribal Forest Land.

The tribal forest land must be managed on a sustained yield basis according to a written plan. The tribal council can adopt or revise the plan, but the Secretary has the right to approve any new plan or revision. (See Agreement, section 6, p.4).

3. Alienation or Encumbrance of Tribal Land.
(See Agreement, section 7, p.5).

- a. Tribal land may be exchanged for land of equal value or right-of-ways may be granted over tribal land, but only with the consent of the Secretary and with the approval of the Tribe, given pursuant to the tribal constitution and bylaws.
- b. No other tribal land or interests therein may be sold; mortgaged (an exception is that lands acquired by the Tribe in the future may be mortgaged); or otherwise transferred, without the consent of the Tribe, given pursuant to the terms of the tribal constitution and bylaws, of the Secretary and of both Houses of the United States Congress. [This limitation on the Tribal Council's power over tribal

lands could be inserted as the first section of a general article on control of tribal lands or it could be an article in itself, or it could be a provision in the article defining the general powers of the Tribal Council.]

- c. The MRC may lease or otherwise encumber tribal land for the use of non-tribal members, but not for longer than 25 years; however, options to renew are permitted for not more than 25 years. This authority is not made subject to the consent of the Tribe, although certainly such a requirement could be included in the constitution, or the Congress, as above, but it is made subject to the consent of the Secretary pursuant to regulations. [This aspect of the Tribal Council's control of tribal land is discussed in Tab 14 of this Handbook entitled Use of Tribal Lands By Tribal Members and Non-Members.]
- d. Tribal lands may be made available to tribal members for residential, agricultural, or commercial purposes under such terms and conditions as are set forth in the tribal constitution and bylaws. This authority is thus subject to limitations in the constitution and also it is subject to the consent of the Secretary pursuant to regulations. It is not subject to the consent of Congress. [This aspect of the Tribal Council's control of tribal land is discussed in Tab 14 of this Handbook entitled Use of Tribal Lands By Tribal Members and Non-Members.]
- e. It is acknowledged that the Tribe is not precluded from taxing tribal assets or other assets physically within the Tribe's jurisdiction. (See Agreement, section 10, p.6).

D. Basic Principles In the Trust and Management Agreement Which Are Not Proper Subjects of the Constitution But Which Argue In Favor of A Reaffirmation of the Trust and Management Agreement.

The tribal constitution is a document by means of which the tribal members authorize the governing body to exercise tribal powers and impose various limitations on the exercise of those powers. The

tribal constitution, once adopted, is binding on the tribal members and the tribal council, but not on the federal government which is a separate sovereign created under a separate constitution. Traditionally, tribes and the United States have dealt with each other by way of agreement. Thus, in the Trust and Management Agreement, the Tribe and the United States agreed that each would abide by certain principles in the management of the tribal assets, the authority of the United States over the assets being derived from its trust responsibility.

The tribal constitution can apply means of these same principle to the tribal council's power to manage the tribal assets, thus, continuing to bind the Tribe and the tribal council to the principles even though the Agreement may expire. But the tribal constitution has no binding authority over the United States as to the principles of the Agreement. If the Tribe wishes the United States to be bound by the principles in the Agreement, the Tribe must reaffirm the Agreement or enter into a new agreement encompassing the principles it wishes the Secretary to abide by. This constitutional article could impose a duty upon the tribal council to enter into an agreement with the Secretary setting forth the basic principles of that agreement.

The following are the basic principles of the Agreement which define and limit the scope of the supervisory powers of the Secretary, and which argue in favor of a reaffirmation of the Agreement, and also in favor of imposing a constitutional duty in the tribal council to establish by agreement with the Secretary these same basic principles.

1. The Secretary of the Interior agrees that he has only those powers and responsibilities over the tribal assets and the management of the tribal assets as are specifically set forth in the Agreement and those which are commensurate with his duty as trustee to see that the tribal assets are not wasted. (See Agreement, sections 8 and 9, pp.5-6, and narrative, p.23). He thus also agrees that the general power to manage, operate and control tribal assets is vested in the Tribe and its governing body and in such businesses as the governing body may create and delegate the power to manage the tribal assets. (See Agreement, section 8, p.5).

2. The Secretary agrees to assume the duty of providing business advice and assistance to the Tribe, on request of the Tribe. (See Agreement, section 9, p.6).

3. The Secretary acknowledges the Tribe's right to tax all assets within its jurisdiction, including tribal assets held in trust. (See Agreement, section 10, p.6).

4. The United States agrees to indemnify affected parties, including the Tribe and, its officers, from any court awarded damages that might result from the land transfer. (See Agreement, section 11, p.6).

E. Basic Principles In the Management Plan of Menominee Enterprises Which Could Be Incorporated Into the Constitution.

Pursuant to its authority to manage, operate and control the tribal assets on behalf of the Tribe, the MRC established a tribal business, Menominee Enterprise (hereafter referred to as "ME") which is authorized to act on behalf of the Tribe, in managing and operating the tribal mill, the tribal forest land, the enterprise personal property, and such additional assets as are obtained by ME.

The document which created ME is entitled "Management Plan of Menominee Enterprises, a tribal enterprise of the Menominee Indian Tribe of Wisconsin" (hereafter referred to as the "Plan"). The Plan sets forth the powers, obligations, and responsibilities of the tribal business. (See Plan, section 2, p.2).

Like the Trust and Management Agreement, the Plan will remain effective for six months after the date on which the tribal council takes office. However, the tribal council is granted the unilateral right to reaffirm the Plan, by duly adopted resolution, on behalf of the Tribe. If the tribal council reaffirms the Plan, it will remain effective and the tribal council will be substituted for the MRC insofar as the Plan is concerned. (See Plan, section 14d p.29).

This constitutional article could impose a duty upon the tribal council to establish by written plan the principle business arm of the Tribe based upon stated principles as set forth in the article. The following are basic principles established in the Plan which could be adopted into this article of the tribal constitution. If the principles were adopted into the tribal constitution, it would be reasonable and logical for the tribal council to reaffirm the Plan since it is based on those principles.

1. The Scope of ME's Authority Over the Tribal Property It Manages and Operates.
 - a. The Plan establishes ME as the principle business arm of the Tribe vested with all powers necessary to manage and operate the subject property in order to properly conduct the Tribe's business operations. (See Plan, section 4, p.4). The subject property, i.e., the property subject to ME management, includes the tribal mill, the tribal forest land, the enterprise personal property, and such additional assets as are obtained by the tribal enterprise. (See Plan, section 1k, p.2).
 - b. Although not expressly stated in the Plan, one basic principle fairly inferred from the Plan is that the MRC (or the tribal

council) has no authority over the implementation of the Plan, i.e., the operation of ME, except as is specifically set forth in the Plan. (See especially sections 2, 3, 4, 5, 6, 12, and 13). Thus, the intention of the Plan is to retain ultimate control over the tribal business in the governing body of the Tribe by retaining in it the power to terminate the Plan as well as other key powers, also to provide sufficient safeguards such that the daily operation of the tribal business is insulated from political pressures which inherently motivate the governing body of the Tribe. The tribal business can then make decisions based on good business sense rather than on good political sense. Experience shows that the two senses do not necessarily lead to the same decision.

- c. ME has no interest in any tribal real property, except the right to manage the property as set forth in the Plan. No tribal real property can be an asset of ME for any purpose. (See Plan, section 8c, p.23).
- d. No tribal property other than the specific property expressly made subject to ME management is subject to the powers of ME. (See Plan, section 3, p.3).
- e. The Tribe retains its right and power to exercise all proper governmental and sovereign functions over the property managed by ME. (See Plan, section 3, p.3).
- f. The provisions of the Plan are subject to all the provisions of the Trust and Management Agreement and of the tribal constitution. Thus, if the Plan provisions conflict with the provisions of either the Agreement or the constitution, the conflicting provisions in the Plan are void. (See Plan, section 3, pp.3-4).
- g. ME is authorized "to pledge, mortgage, and otherwise encumber ... assets of the tribe under such terms and conditions as are set forth in the tribal constitution and by-laws." (See section 4k, p.5) You will recall in this regard that section 7 of the Trust and Management Agreement, p.5, provides that tribal land or interests therein may not be sold, mortgaged, alienated; or otherwise transferred without

the consent of the Tribe, given pursuant to the terms of the tribal constitution and bylaws, the Secretary, and Congress.

ME's authorization also appears to include the power to lease tribal lands for business related purposes. Insofar as leases or other encumbrances involving non-Indians is concerned, section 7 of the Agreement states that those may not be granted for longer than 25 years, with a 25 year option to renew, and the Secretary must approve the arrangement.

Moreover, ME's authorization is broad enough to include the power to authorize tribal members to use tribal forest lands and other tribal lands subject to its authority, as well ME's own lands, for business related purposes. However, section 7 of the Agreement states that the constitution shall set forth the terms and conditions of such use. ME has no power to authorize tribal members or non-tribal members to use tribal non-forest lands; MRC or the tribal council, would have that authority subject to the terms and conditions in the tribal constitution.

- h. The Plan authorizes ME to acquire and own real property in its own name and not the Tribe's. (See Plan, section 4l, p.6; and section 8, p.23). As to this real property acquired by ME, the Tribe has waived certain federal protections afforded other tribal real property. See section 4j, p.5; and section 1l, p.26. The reason for such specific waives of immunity is to enable ME easily to pledge its real property as security for loans, for contract performance, and for other business ventures. You will recall that it is extremely difficult for ME to sell, mortgage, or otherwise transfer tribal real property or interests in tribal real property because of section 7 of the Agreement which requires the consent of the Tribe, the Secretary and the Congress. This topic is discussed in more detail in part below. ME has the power to sell its own lands if "reasonably necessary (i) to implement the powers enumerated [in section 4a-s, pp.5-6] or (ii) to further the business needs of the Tribe." (See Plan, section 4t, p.6).
- i. ME must manage all forest land on a sustained yield basis according to the Forest Management

Plan: Menominee Enterprises, Inc., 1968-1982 (1973 Revision) and according to section 6 of the Trust and Management Agreement. (See Plan, section 9, p.24).

2. The Tribe Waives As To ME Its Sovereign Immunity From Suit and the Tribe Authorizes ME To Pledge Any Real Property Which ME Acquires In Its Own Name As Security For Its Performance of Agreements.

For the purpose of enabling ME to enter into business agreements with other parties either to secure loans or to provide services or products, it is necessary (1) that ME be able to pledge assets as security for debts, and (2) that the other parties be assured that they can enforce ME's pledge of assets, or enforce ME's pledge to provide services or products in a court of law.

The Tribe, its officers and its assets, including real property are, under federal law, immune from suit because of the Tribe's status as a sovereign government. In addition, the tribal governing body and ME, under section 4k, p.5 of the Plan, are not able to pledge the Tribe's real property without the consent of the tribal members, obtained in accordance with the tribal constitution, and the consent of the Secretary and Congress as well. (See section 7 of the Trust and Management Agreement.) Thus, ME as an arm of the tribal government is subject to the same immunities and limitations as the Tribe and the tribal governing body, unless specifically excepted by the Tribe and in accordance with the Trust and Management Agreement.

Therefore, to enable ME to enter into business agreements with other parties as discussed above, the Plan provides the following exemptions for ME from tribal immunity and limitations on tribal power to pledge and transfer interests in real property:

- a. The Tribe consents to allowing ME, by specific written agreement with any party, to sue and be sued in its capacity as a tribal enterprise, upon any contract, claim, or obligation arising out of its authorized activities; and the Tribe further authorizes ME to agree, by specific written agreement, to waive any immunity from suit it might otherwise have. (See Plan, section 11, p.26).

- b. Under section 11, p.26, ME is authorized to pledge, mortgage or otherwise encumber its own assets including real property, acquired under authority of section 4l, p.6, as security for debts. Of course, ME's assets do not include tribal forest land or any other tribal land

Finally, the Plan expressly states that, except as specifically provided above, (1) the Plan does not operate as a partial or total waiver of the Tribe's sovereign immunity, (2) it does not waive or limit the sovereign and governmental powers of the Tribe over ME, and (3) it does not waive the exemption and immunities from taxation to which ME is entitled, and to which the

Tribe, its members and its business are entitled by law. (See Plan, section 11, p.27, and the Trust and Management Agreement, section 10; see also Plan, section 3, p.3).

3. Authority and Rights of the Tribal Governing Body, of the Board of Directors of ME, and of Tribal Members.
 - a. Authority and rights of the tribal governing body.
 - (1) Authority to formulate the plan for the operation of the principle business arm of the Tribe. That is, to determine the rights and powers of the board of directors and of the tribal members. (See section 3 of Trust and Management Agreement, and section 2 of the Plan).
 - (2) Authority to recall members of the board of directors by affirmative vote of 6 members of MRC. (See Plan, section 5m(2), p.15).
 - (3) Authority to represent the Tribe in consulting with the ME board in its annual determination of what share of ME's excess profits should be retained by ME and what share should be paid to the Tribe. (See Plan, section 10b(3), pp.25-26). And the corresponding right to receive the tribal share on behalf of the Tribe and to determine whether the tribal share shall be utilized for tribal operations, distributed to tribal members, or divided and used for both purposes." (See Plan, section 10b(4), p.26).
 - (4) Authority to amend or repeal any action of the board of directors (taken pursuant to section 12(a) of the Plan) to amend sections 5, 6, 7, or 14(a); but a 2/3 vote of the MRC is required. (See Plan, section 12a, p.27). And the authority to make amendments to any provisions of the Plan by a 2/3 vote. (See Plan, section 12b, p.28).
 - (5) Unilateral authority to terminate the Plan by at least 2/3 vote of the MRC. If the Plan is thus properly terminated, the MRC (or the tribal council) has the right to assume control over all assets

and liabilities of ME from the board of directors and to have all books and records of ME delivered to the MRC (or tribal council). (See Plan, section 13, pp.28-29).

b. Authority and rights of the Board of Directors.

- (1) Authority to vote themselves a reasonable compensation for services. (See Plan, section 5h, p.11).
- (2) Authority to be subject to recall only on grounds of dishonesty, incompetence, nonparticipation in board matters, or other conduct seriously determined to the interests of the Tribe or of the tribal enterprise. (See Plan, section 5m, p.14).
- (3) If recall proceedings are instituted by tribal governing body, the right to be adequately notified of charges and hearing-meeting and to be heard at the hearing-meeting. (See Plan, section 5m(2), p.15).
- (4) Authority to elect and remove officers from among members of the board, and to fill vacancies in office. (See Plan, section 7, pp.18-19).
- (5) Authority to fill vacancies in board of directors membership by appointment until the next election. (See Plan, section 5b, p.7).
- (6) Authority to determine, in accordance with formula established in section 10b(1) and (2), p.25 of the Plan, the amount of excess ME profits to be retained by ME ("retained share"), and the amount to be paid over to the tribal governing body ("tribal share").
- (7) Authority to amend only sections 5, 6, 7, and 14(a) of the Plan, but the amendments cannot be inconsistent with other sections of the Plan. (See section 12a, p.27). And the right to be overturned in such action only by a vote of 6 of the 9 members of the MRC, i.e., a 2/3 vote. Section 5 concerns the internal rules and regulations of the

board of directors, and significantly, includes the procedure by which members of the board may be recalled. Section 6 concerns business meetings and voting at such meetings. Section 7 concerns the officers of the board of directors. And section 14(a) concerns the location of ME's principal place of business.

- (8) Right to be notified of any proposed action of the MRC (or tribal council) to terminate the Plan, such notice to be given in the notice of the meeting at which it will be considered. And the right to "be given a full opportunity to be heard at the meeting at which the action is proposed." (See Plan, section 13, p.28).

c. Rights of the tribal members.

- (1) All directors of ME must be tribal members. (See Plan, section 5b, p.8).
- (2) Right to recall members of the board of directors of ME in accordance with procedures set forth in section 5m(1), p.5 of the Plan.
- (3) Right to have an annual business meeting of tribal members held to receive report on business operations to elect directors, and to transact other business. (See Plan, section 6a, p.16).
- (4) Right to petition for a special business meeting. (See section 6b, p.16).
- (5) Right to be notified in writing by mail of meetings. (See section 6d, p.12).
- (6) If eligible voter of tribe, right to vote for board of directors and other matters submitted to vote at regular and special business meetings. Write-in voting and absentee voting is permitted, but not voting by proxy, or cumulative voting. (See section 6e, p.18).
- (7) Right to have 125 eligible tribal voters at business meetings before business can be conducted. (See section 6f, p.18).

C. Do you think this article should impose a duty on the tribal council to establish by a written plan the principle business arm of the Tribe to manage the tribal assets?

D. Are there any principles you think should be modified?

E. Are there any principles you think are omitted and should be included?

F. If you decide to adopt, without significant change, the present management arrangement, it will be necessary to decide specific questions called for by various provisions of the Agreement and Plan as follows:

1. Section 4k, pp.5-6 of the Plan calls for the constitution to establish the terms and conditions under which ME can pledge, mortgage, and otherwise encumber tribal assets. What should these "terms and conditions be?
2. Section 7, p.5, of the Agreement calls for the constitution to establish the manner in which tribal consent can be obtained for the sale, mortgage, alienation or other transfer of tribal land or interests in land. What should be the procedure for obtaining "tribal consent" to alienate or mortgage land?
3. Section 14, pp.7-8, of the Agreement, calls for the constitution to establish the manner in which the Trust and Management Agreement may be amended (it must be written). What should be the procedure for obtaining the agreement of the Tribe to amend the Trust and Management Agreement?

- (8) Right to have candidates for board named in a nominating petition signed by at least 75 eligible tribal voters and filed 20 days before the election. (See section 5b, p.8).
- (9) Right to have the ME's profits determined for each fiscal year in accordance with the formula established in section 10b(1) and (2) of the Plan, in order to ascertain "excess profits" which are subject to an equitable division between the Tribe, i.e., "tribal share", and ME, i.e., "retained share." (See section 10b(3), p.25). And the related right to participate in any distribution to tribal members of the tribal share of ME profits, if the tribal governing body decides to distribute all or part of the tribal share to members. The tribal governing body in deciding how to distribute the tribal share must "use its best judgment and shall carefully consider both the need for effective tribal operations and the individual financial needs of tribal members." (See section 10b(4), p.26).

4. Involvement Of The United States.

The United States government has no authority in regard to the operation of the Plan, except as specifically provided in the Trust and Management Agreement. Section 9 of the Trust and Management Agreement in which the Secretary assumes the duty to provide expert business assistance to the Tribe on its request is specifically applied to ME. The Secretary will fulfill this duty in a manner consistent with his trust responsibility to the Tribe and its members. (See section 14e, p.30).

II. QUESTIONS

A. Which of the aforementioned basic principles established in the Trust and Management Agreement and in the Management Plan of MEI do you think should be included in the Constitution, or to phrase it another way, do you think the present arrangement for the management of tribal assets, as established by the Trust and Management Agreement and by the Management Plan of Me, should be adopted into the Constitution?

B. Do you think this article should impose a duty on the tribal council to enter into an agreement with the United States establishing in specific terms the role of the United States in the management of the tribal assets?